

Decision 05-06-024 June 16, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of SOUTHERN CALIFORNIA  
EDISON COMPANY (U 338E) Regarding the  
Future Disposition of the Mohave Generating  
Station.

Application 02-05-046  
(Filed May 17, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO THE NATURAL RESOURCES DEFENSE COUNCIL  
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-12-016**

**Summary**

This decision awards the Natural Resources Defense Council (NRDC) \$219,244.45 in compensation for its contributions to Decision (D.) 04-12-016.

**Background**

The Mohave Generating Station (Mohave) is a two-unit, coal-fired power plant located in Laughlin, Nevada. Southern California Edison Company (SCE) is the plant operator and owns a 56% undivided interest in Mohave, which entitles SCE to approximately 885 Megawatts (MW). Pursuant to the terms of a 1999 Consent Decree<sup>1</sup> specific environmental controls must be installed at Mohave for it to continue in operation post 2005. SCE filed this application

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<sup>1</sup> The Mohave Environmental Consent Decree settled a federal civil lawsuit, CV-S-98-00305-LDG (RJJ), that was filed in 1997 by Grand Canyon Trust, Inc., Sierra Club, Inc., and National Parks and Conservation Association, Inc. against SCE and the other Mohave co-owners alleging various air quality violations at Mohave. SCE and the other co-owners were signatories to the 1999 Consent Decree.

seeking Commission authorization to either make the necessary environmental expenditures, or prepare to close the plant down.

Mohave obtains all of its coal supply from the Black Mesa coal mine, which is located approximately 273 miles east of Mohave in northeast Arizona. The mine is on lands that belong to the Hopi Tribe and Navajo Nation. The coal is transported from the mine to Mohave by way of a coal-slurry pipeline that requires that the coal be pulverized and mixed with water near the mine site to produce the slurry. Once the slurry mixture reaches Mohave, the water is extracted and the coal is dried. The water for the slurry process and for all other water requirements of the mine comes from the N-Aquifer, a well that underlies the land of the Hopi Tribe and Navajo Nation.

Approximately 4,400 acre-feet per year is extracted from the N-Aquifer to slurry the coal. The Hopi Tribe opposes pumping of the N-Aquifer after 2005. Beginning in 2001, SCE and the other Mohave co-owners restarted past efforts to develop an alternative water source to the N-Aquifer for the slurry line. Some time during the pendency of SCE's application, the parties determined that the only potentially viable alternative is the C-Aquifer. In addition to the uncertainty of the water situation, there are also some unanswered questions as to the availability of the coal supply.

D.04-12-016, among other actions, authorized SCE to continue working on resolution of the essential water and coal issues, including the funding of the C-Aquifer hydro-geological and environmental studies. Once the two primary unknown questions concerning the availability of water and coal supplies are ascertained, the Commission will review those costs and determine if it can make a final decision on the future of Mohave as a coal-fired plant.

Numerous parties participated in this proceeding including: The Navajo Nation, Hopi Tribe, Salt River Agricultural Improvement and Power District, the Center for Energy and Economic Development, The Utility Reform Network (TURN), Office of Ratepayer Advocates (ORA), NRDC and Water and Energy Consulting (WEC).

Nine parties protested SCE's application. On October 11, 2002, a combined Prehearing Conference (PHC) and Public Participation Hearing (PPH) was held at the Navajo Chapter House in Tuba City, Arizona. On January 7, 2003, the assigned Commissioner issued a Scoping Memo; evidentiary hearings were held June 14 through July 9, 2004; post hearing concurrent and reply briefs were filed August 9 and August 24, 2004, respectively; the proposed decision (PD) was mailed on October 20, 2004; final oral argument (FOA) was held on November 30, 2004; comments and reply comments to the PD were received; and on December 2, 2004, the Commission issued its decision in the proceeding. No applications for rehearing or petitions for modification were filed. The proceeding is closed.

NRDC actively participated in this proceeding including filing a protest; attending the October 2002 PHC/PPH; submitting testimony; sponsoring expert witnesses/testimony; conducting cross-examination; filing concurrent opening and reply briefs; submitting comments and reply comments to the PD and participating in the FOA. NRDC's primary role in the proceeding was proposing alternatives to Mohave continuing as a coal-burning plant to be studied along with pursuing solutions to the outstanding coal and water issues.

### **Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an

intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceeding. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the PHC (or in special circumstances, at other appropriate times that we specify). (Section 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (Section 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (Sections 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (Sections 1802 (h), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (Section 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

### **Procedural Requirements**

The PHC in this matter was held on October 11, 2002, and NRDC timely filed its NOI on October 28, 2002. In its NOI, NRDC addressed its anticipated

scope of participation, estimated cost of participation, customer status and significant financial hardship. A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.<sup>2</sup> NRDC filed a supplemental NOI on May 13, 2004, to update its anticipated scope and cost of participation. NRDC timely filed its request for request for compensation within 60 days of D.04-12-016.

NRDC has previously been found eligible for intervenor compensation in D.04-08-042 (August 19, 2004) for its contributions to Decision (D.) 04-01-050, D.03-12-062, D.03-06-071, D.03-06-067 and D.02-10-062 (the “Procurement Decisions”). NRDC received a finding of financial hardship and was found eligible for intervenor compensation pursuant to an ALJ ruling issued May 14, 2003.

### **Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commissioner adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the intervenor? (*See* Section 1802(h).) Second, if the customer’s contentions or recommendations paralleled those of another party, did the customer’s participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* Sections 1802(h), 1802.5.) As described in Section 1802(h), the assessment of

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<sup>2</sup> Pub. Util. Code § 1804.

whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>3</sup>

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded, if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order.<sup>4</sup> With this guidance in mind, we turn to the claimed contributions NRDC made to the proceeding. As discussed below, examination of D.04-12-016 readily confirms NRDC's claimed contributions.

NRDC Recommendation: Explore alternatives to Mohave continuing operation as a coal-burning plant. NRDC's alternative proposal consisted of three components: energy efficiency projects, renewable energy investments, and building an integrated gasification combined-cycle power plant (IGCC).

Commission Action: Ordering Paragraph (OP) 3 directs SCE to "explore alternatives to Mohave continuing operation as a coal-burning plant." By

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<sup>3</sup> D.98-04-059, 79 CPUC 2d, 628 at 653.

<sup>4</sup> See D.03-12-019, discussing D.89-03-063 (31 CPUC 2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

directing SCE to further study these proposals, we recognized the potential of these alternatives. In particular, we referenced our interest in NRDC's IGCC proposal and largely adopted NRDC's recommendations on alternatives, and on the IGCC concept.

NRDC Recommendation: Only allow SCE to recover its costs for keeping the "Mohave open" option alive. NRDC argued in the proceeding that only the costs associated with ongoing water studies, the coal washing study and environmental report, and the alternatives study should be recovered by SCE. With the uncertainties surrounding the water and coal issues still unresolved, NRDC urged the Commission to only allow SCE to move forward with critical path expenditures that would preserve the "Mohave open" option and to explore alternatives.

Commission Action: OP 1 authorized SCE to "spend necessary and appropriate funds on critical path investments at Mohave ... including the C-Aquifer studies and an alternatives feasibility study."

NRDC Recommendation: Only allow SCE to recover 56% of the costs associated with the critical path expenditures to reflect SCE's 56% ownership of Mohave.

Commission Action: OP 2 authorized SCE to recover 56% of the critical funding costs and 100% of the alternatives feasibility study.

NRDC Recommendation: NRDC suggested that periodic updates on progress on the water and coal issues, the alternatives feasibility study, the disposition of the other Mohave co-owners to the retrofit project and SCE's "Gantt" timeline for the retrofit be made by SCE.

Commission Action: We directed SCE to “file monthly reports with the Energy Division” covering the topics suggested by NRDC. (D.04-12-016, *mimeo.*, p. 61.)

NRDC Recommendation: Even with the environmental retrofits required by the Consent Decree, Mohave will continue to emit carbon.

Commission Action: We directed SCE to report back on the status of carbon regulation “ . . . when Edison files its application for full authorization to do the Mohave retrofits.” (D.04-12-016, *mimeo.*, p. 17.) This action tacitly accepts that concern over carbon emission is likely to continue.

NRDC Recommendation: The terms of the Consent Decree require shut-down of Mohave post 2005 and parties should not speculate that this date and/or other terms of the Consent Decree will change.

Commission Action: We advised that “[N]o matter what the ultimate fate of Mohave’s future will be, it appears that pursuant to the terms of the Consent Decree, the plant will have to temporarily shut-down at the end of 2005.” (D.04-12-016, *mimeo.*, p. 62.) This finding implicitly accepts NRDC’s recommendation.

NRDC Recommendation: Alternatives do not necessarily conflict with tribal economic concerns. NRDC presented testimony on the renewable potential on tribal lands.

Commission Action: We directed SCE to conduct the alternatives feasibility study. The NRDC recommendation provided support for this directive.

NRDC Recommendation: Once the retrofits are installed at Mohave, the plant should not be evaluated on a typical 30-year life cycle because Mohave’s water supply for cooling purposes at the plant terminates in 2026. Therefore,



when the Commission evaluates the cost of the plant, it should use a 17-20 year plant life, not a 30-year.

Commission Action: We stated that the cost estimate should be based on a plant life of 17-20 years. (D.04-12-016, *mimeo.*, p. 9.)

NRDC Recommendation: The Commission should not issue a conditional certificate of public convenience and necessity (CPCN) as urged by Peabody, the Hopi Tribe and the Navajo Nation.

Commission Action: We rejected the concept of issuing a conditional CPCN, saying that one would “thwart, not facilitate, the parties’ continued negotiations on the other unresolved issues – most importantly the cost of coal and water . . . “

NRDC Recommendation: The Commission should only place limited weight on a prior Mitigated Negative Declaration (MND). The Navajo Nation had asked the Commission to take official notice of a MND from 2000, but NRDC argued the MND was outdated.

Commission Action: We said “[W]e will allow notice to be taken of this MND with the caveat that the Commission is not making a finding in this decision whether or not further environmental review of the project may be necessary, and with the further specification that the MND from 2000 may be outdated by the time the project needs to be reviewed again.” (D.04-12-016, *mimeo.*, pp. 20-21.)

NRDC Recommendation: Do not prejudice the outcome of the alternatives study.

Commission Action: We stated “ it is not prejudging the outcome of the alternatives study.” (D.04-12-016, *mimeo.*, p. 16.)

NRDC Recommendation: Intervenor should be eligible for follow-up work ordered in the decision.

Commission Action: We adopted NRDC's recommendation that intervenors be allowed to seek compensation for additional work resulting from the decision. (D.04-12-016, *mimeo.*, p. 16.)

The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope.<sup>5</sup> Here, however, NRDC achieved a high level of success on the issues it raised. The proceeding and the Commission's final decision benefited from NRDC's participation.

As described above, this proceeding took over 2 ½ years from its filing in May 2002 until the Commission's final decision on December 2, 2004. In addition, there were over 10 active parties to the proceeding. NRDC coordinated its efforts with other parties, especially the other public interest advocates such as WEC, TURN and ORA, so as to avoid duplication of effort. To this effect, NRDC focused on its expertise on energy and its impacts on the environment. NRDC produced evidence and testimony regarding the alternatives available to replace or supplement SCE's share of Mohave power – in the face of the imminent temporary or permanent shutdown of the plant. NRDC presented alternatives that were mindful of the competing priorities this case presented for the Commission that included concern over the prodigious amounts of water used for slurring the coal to Mohave and then cooling at Mohave, the environmental impacts of a coal-burning plant in the region of the Grand

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<sup>5</sup> See, e.g., D.98-04-028, 79 CPUC 2d 570, 573-574.

Canyon, future mercury emission issues, and the economic health and future of the Navajo Nation and Hopi Tribe. In addition, NRDC urged the Commission not to commit SCE ratepayers to pay for the \$1.2 billion in required environmental controls and related capital improvements until the water and coal issues are resolved and alternatives are studied. To the extent NRDC's positions were the same as or similar to those of other parties, we find that NRDC's showing supplemented, complemented, or contributed to the showing of the other parties.

### **Reasonableness of Requested Compensation**

We now determine whether NRDC's compensation request of \$219, 244.45 is reasonable. NRDC itemized its request with the necessary specificity as required by the intervenor statute and it attached to its claim supporting documentation for the requested amount. The fees and costs are summarized in the award section of this decision.

The components of this request must constitute reasonable fees and costs of the intervenor's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the intervenor's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Also, D.98-04-059 directed intervenors to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of an intervenor's participation should bear a reasonable relationship to the benefits realized in their participation. This showing assists us in determining the overall reasonableness of the request.

NRDC documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, policy analysts and experts, along with a brief

description of each activity. The hourly breakdown reasonably supports the claim for total hours.<sup>6</sup> Given the scope of NRDC's participation and the work products prepared,<sup>7</sup> the number of claimed hours is reasonable. Since we find that virtually all of NRDC's efforts made a substantial contribution to the decision, we need not exclude from NRDC's award any compensation for specific issues.

It is difficult to quantify the benefits to NRDC's participation over the life of Mohave, or its alternatives. For example, only authorizing critical path items that will keep the "Mohave open" option alive now, rather than authorizing the entire \$1.2 billion in retrofits may prove to be a prudent course of action. Advising the Commission to consider the cost of mercury emissions in the future is also prudent. In addition, exploring alternative sources of energy to be used either in lieu of, or in concert with Mohave, may prove to be economical in the long run. Considering these long-term qualitative issues, we find NRDC's efforts have been productive.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. In this proceeding, NRDC engaged an economist from Microdesign Northwest, two senior attorneys and a science director from NRDC, and a senior attorney and an attorney, two junior and one senior policy analysts, and a firm administrator

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<sup>6</sup> NRDC separated the hours associated with the preparation of this compensation request and (consistent with Commission practice) requests compensation at half the usual hourly rate for this time.

<sup>7</sup> NRDC included an Attachment A that listed all of the NRDC filings in the proceeding from October 4, 2002 through November 15, 2004.

from Grueneich Resource Advocates (GRA). As we discuss below, we find the hourly rates proposed by NRDC for these individuals are reasonable.

**Microdesign Northwest**

NRDC requests hourly rates of \$175, \$185 and \$200 for Jim Lazar from Microdesign Northwest for his work in 2002, 2003 and 2004, respectively. Lazar holds a BA and an MA in Economics from Western Washington University and an MPA from the University of Washington. Lazar has over 25-years experience providing technical assistance to local, state, and federal public agencies, public interest groups, industry trade groups, and electric utilities on a variety of topics including revenue requirement, cost of capital, formation of new publicly owned utility systems, electric and gas integrated resource planning, cost of service and rate design, least cost and integrated resource planning, regulatory treatment of excess capacity, subsidiary profits, and regulatory treatment of real estate transactions. In this proceeding, Lazar testified on the impact the temporary or permanent closure of Mohave would have and identified a number of alternatives that could be implemented to supplement or replace the power generated at the facility. He assisted NRDC in analyzing the proposals and testimony of other parties, and was integral to NRDC's recommendation for a study of alternatives.

The 2002 and 2003 requested hourly rates of \$175 and \$185 for Lazar are the same as those approved by the Commission for William Marcus, a consulting economist for TURN, in D.04-02-017. Given the similarities between these individuals in terms of background, experience and participation, applying the rates approved for Marcus to those requested for Lazar appears reasonable. The

requested \$200 rate for 2004 is equal to the requested 2003 rate of \$185 increased by an 8% escalation factor, per our direction in Resolution ALJ-184.<sup>8</sup>

## **NRDC**

NRDC requests an hourly rate of \$275 for David Beckman for work done in 2002, 2003 and 2004.<sup>9</sup> Beckman is a Senior Attorney and Director of NRDC's Coastal Water Quality Project. He holds an AB from the University of California, Berkeley and a JD from Harvard Law School, and has 15-years of experience. Before joining NRDC, Beckman was an associate with Heller, Ehrman, White & McAuliffe where he handled cases under CERCLA, NEPA, CEQA, Title VI of the Civil Rights Act of 1965, the Transportation Act and the Land and Water Conservation Fund. At NRDC, Beckman provided legal, technical and policy expertise and was instrumental in developing case strategy, testimony and other filings and court room strategy for the Mohave proceeding. NRDC claims the \$275 rate request for Beckman is consistent with rates awarded other senior attorneys<sup>10</sup> by the Commission in other compensation award decisions.

NRDC requests an hourly rate of \$220 for Andrew Wetzler for work done in 2002, 2003 and 2004. Wetzler is a Senior Attorney with NRDC with extensive environmental advocacy and litigation experience. Wetzler holds a BA from Brown University and a JD from the University of Virginia. Wetzler has been with NRDC for seven years, and an associate at Cravath, Swaine & Moore for the

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<sup>8</sup> See Attachment 2, p. 7 of R.04-10-010, dated October 7, 2004.

<sup>9</sup> NRDC is not requesting an 8% increase for 2004 work in the interest of keeping the intervenor compensation request for in-house NRDC staff as low as possible.

<sup>10</sup> NRDC compares Beckman's experience and qualifications with those of Robert Finkelstein of TURN.

prior three years. Wetzler has extensive litigation experience, including litigation under the Endangered Species Act, Marine Mammal Protection Act, National Environment Policy Act, the Forest Management Practices Act and the Clean Air Act. In this proceeding, Wetzler did extensive research and work on issues related to the N-Aquifer and Black Mesa Mine, including Peabody's life-of-mine permit application. Wetzler represented NRDC at the PHC in Tuba City, helped develop testimony, briefs and other filings, and assisted in the development of the case strategy. NRDC claims the \$220 rate request is consistent with rates awarded other senior attorneys.<sup>11</sup>

NRDC requests an hourly rate of \$215 for work done by Dan Lashof in 2002, 2003 and 2004.<sup>12</sup> Lashof is the Science Director of NRDC's Climate Center, holds an AB from Harvard University and a PhD from the University of California, Berkeley and has over 20 years of experience analyzing global climate change. Lashof has served as a member on the President's Council of Advisors on Science and Technology, the Federal Advisory Committee on Clean Air Act Implementation, and the Presidentially appointed Federal Advisory Committee on Options for Reducing Greenhouse Gas Emissions from Personal Motor Vehicles. During the proceeding, Lashof provided policy and technical expertise, was involved in all aspects of case strategy, assisted in the development of

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<sup>11</sup> NRDC compares Wetzler's experience and qualifications with those of Marcel Hawinger of TURN.

<sup>12</sup> The \$215/hour for work performed in 2002, 2003, and 2004 is slightly higher than the rate of \$200 awarded in D.04-03-033 to Alan Noguee, Director of the Clean Energy Program at UCS, for work performed in 2002. The slightly higher rate is due to Lashof's PhD.

testimony and briefs and provided technical input on electric generation options and air quality regulatory issues.

**Grueneich Resource Advocates**

NRDC requests hourly rates of \$350, \$385 and \$415 for Dian Grueneich for work performed in 2002, 2003 and 2004, respectively. Grueneich has over 25 years working on California energy issues and is a nationally known energy expert. Grueneich holds a BA from Stanford University and a JD from Georgetown University. In this proceeding, Grueneich was responsible for general project oversight, advising her GRA associate London on legal and case strategy issues and editing and reviewing briefs and filings. NRDC claims the requested hourly rate for Grueneich is reasonable as her 2002 and 2003 rates were approved by the Commission in D.04-05-010, and the 2004 rate is based on the 2003 rate escalated by 8%.

NRDC requests hourly rates of \$150, \$160 and \$190 for Jody London for work performed in 2002, 2003 and 2004, respectively. London is a Senior Program Manager at GRA, has over 15 years in the energy industry and holds a BA from the University of California, Berkeley and a MPA from Columbia University. In this proceeding, London managed all aspects of NRDC's participation, developed the case strategy, drafted briefs and other filings, actively participated in the evidentiary hearings by cross-examining witnesses, and presenting Final Oral Argument (FOA) before the Commission. The rates requested for London for 2002 and 2003 were awarded in D.04-05-010. The requested rate of \$190 for 2004 is based on the fact that during 2004, she



functioned essentially as a senior attorney and \$190 is well within the range of approved hourly rates for others performing similar functions.<sup>13</sup>

NRDC is requesting hourly rates of \$230 for 2002, \$265 for 2003 and \$285 for 2004 for work performed by Theresa Cho. Cho has over 11 years of experience on energy, environmental, contract and construction matters and assisted NRDC with legal research and writing on pleadings and testimony. Cho has a BA from Wesleyan University and a JD from Boalt Hall at the University of California, Berkeley. NRDC claims the requested rates are reasonable as the Commission approved in D.03-10-085 a rate of \$250 for 2002 for Julie Levin, an attorney with comparable experience to Cho. The Commission approved a rate of \$265 for Cho for 2003 in D.03-10-085, and the increased rate requested for 2004 reflects the 8% escalation factor.

NRDC requests hourly rates of \$90 and \$100 for Michael McCormick for work done in 2002 and 2003 when he was a Policy Analyst for GRA. McCormick provided research assistance, analytical support and assistance in developing NRDC's position and testimony. He holds a BA from St. Johns College and a MS from the University of San Francisco. The 2002 and 2003 rates requested for McCormick were awarded by the Commission in D.04-05-010.

NRDC requests an hourly rate of \$95 for Andrew Schwartz, a Policy/Data Analyst at GRA. Schwartz assisted in general research on a range of energy issues in this proceeding and assisted in the development of the intervenor compensation claim. Schwartz has a BA from the University of Colorado and a

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<sup>13</sup> The Commission approved an hourly rate of \$220 for 2001/2002 for James Weil of Aglet Consumer Alliance, and Weil is an engineer who performs legal representation work.

MPP from the Goldman School of Public Policy at the University of California, Berkeley. NRDC claims the requested rate is reasonable since Schwartz's role at GRA and in this proceeding paralleled McCormick's work, so using an average of the approved rates for McCormick is a reasonable benchmark for Schwartz.

NRDC requests an hourly rate of \$65 for work done by Jack McGowan in 2004. McGowan is the Firm Administrator at GRA. He has 17 years of experience in administration of large budget projects, and he assisted in the development of this compensation claim. McGowan holds a BS from California State University, Hayward. The Commission awarded a rate of \$60/hour for McGowan in 2003 in D.03-10-085 and D.04-05-010 and \$65 is the 2003 rate escalated by 8%.

The incidental costs for NRDC's participation in this proceeding, including telephone charges, facsimile charges, postage, messenger deliveries, photocopying and travel, are well-documented and reasonable.

### **Award**

As set forth in the table below, we award NRDC \$219,244.45.

### **Attorney Fees**

<b>Attorney</b>	<b>Hours</b>		<b>Total</b>
David Beckman	19.1 @ \$275	2002	\$ 5,252.50
	35.1 @ \$275	2003	\$ 9,652.50
	24.1 @ \$275	2004	\$ 6,627.50
Andrew Wetzler	6.3 @ \$220	2002	\$ 1,386.00
	14.05 @ \$220	2003	\$ 3,091.00
	17.4 @ \$220	2004	\$ 3,828.00
Dian Grueneich	3.25 @ \$350	2002	\$ 1,137.50
	7.2 @ \$385	2003	\$ 2,772.00
	45.31 @ \$415	2004	\$18,803.65

Theresa Cho	1.75 @ \$230	2002	\$ 402.50
	12.5 @ \$265	2003	\$ 3,312.50
	2.75 @ \$285	2004	\$ 783.75

**Experts and Consultants**

Jim Lazar	20 @ \$175	2002	\$ 3,500.00
	150.5 @ \$185	2003	\$27,842.50
	62.5 @ \$200	2004	\$12,500.00

Daniel Lashof	6.95 @ \$215	2002	\$ 1,494.25
	14.35 @ \$215	2003	\$ 3,085.25
	15.8 @ \$215	2004	\$ 3,397.00
Jody London	73.85 @ \$150	2002	\$11,077.50
	110.7 @ \$160	2003	\$17,537.00
	282.4 @ \$190	2004	\$53,656.00
Michael McCormick	32.5 @ \$90	2002	\$ 2,925.00
	71.25 @ \$100	2003	\$ 7,125.00

**Travel and Intervenor Compensation Claim Preparation**

@ ½ authorized hourly rate per year

Jim Lazar	\$1,200.00
David Beckman	\$2,681.25
Daniel Lashof	\$1,612.50
Andrew Wetzler	\$1,320.00
Dian Grueneich	\$ 607.50
Jody London	\$3,119.00
Michael McCormick	\$ 50.00
Andrew Schwartz	\$1,453.50
Jack McGowan	\$ 211.50

**Expenses**

Microdesign Northwest	\$ 989.64
NRDC	\$3,100.90
GRA	\$1,709.76

**TOTAL \$219,244.45**

Consistent with previous Commission decisions, we will order that interest be paid on the award amount<sup>14</sup>commencing the 75<sup>th</sup> day after NRDC filed its compensation request and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. NRDC's records should identify specific issues for which it requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

#### **Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

#### **Assignment of Proceeding**

Loretta M. Lynch was the Assigned Commissioner during the course of the proceeding, and Michael R. Peevey is now the Assigned Commissioner. Carol A. Brown is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. NRDC has previously been found eligible for intervenor compensation for its contribution to Commission decisions, D.04-01-050, D.03-12-062, D.03-06-071,

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<sup>14</sup> At the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15.

D.03-06-067 and D.02-10-062 pursuant to D.04-08-042, creating a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.

2. NRDC filed a timely NOI on October 28, 2002, following a PHC/PPH on October 11, 2002.

3. NRDC timely filed its request for intervenor compensation on December 28, 2004, following the Commission's issuance of D.04-12-016 on December 2, 2004.

4. NRDC has provided the Commission with all other information necessary to be eligible to claim intervenor compensation in its original NOI filed October 28, 2002, and in its supplemental NOI filed May 13, 2004.

5. No objection has been made to NRDC's NOI or claim for compensation.

6. NRDC made substantial contributions to D.04-12-016.

7. NRDC's requested hourly rates for attorneys and experts are reasonable when compared to the market rates for persons with similar training and experience. NRDC's requested costs are also reasonable.

8. The total of these reasonable fees and costs is \$219,244.45.

### **Conclusions of Law**

1. NRDC was found eligible for intervenor compensation for this proceeding pursuant to an ALJ ruling issued May 13, 2003.

2. NRDC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and costs incurred in making substantial contributions to D.04-12-016.

3. Today's order should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Natural Resources Defense Council (NRDC) is awarded \$219,244.45 as compensation for its substantial contributions to Decision 04-12-016.
2. Within 30 days of the effective date of this order, Southern California Edison Company (SCE) shall pay this award to NRDC.
3. SCE shall also pay interest on the award beginning March 14, 2005, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.
4. The comment period for today's decision is waived.

This order is effective today.

Dated June 16, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
JOHN A. BOHN  
Commissioners

Comr. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.

### Compensation Decision Summary Information

<b>Compensation Decision(s):</b>	D0506024
<b>Contribution Decision(s):</b>	D0401050, D0312062, D0306071, D0306067, D0210062 pursuant to D0408042, and D0412016
<b>Proceeding(s):</b>	A0205046
<b>Author:</b>	ALJ Brown
<b>Payer(s):</b>	Southern California Edison Company

### Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Change/Disallowance</b>
Natural Resources Defense Council	12/28/04	\$219,244.45	\$219,244.45	

### Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
David	Beckman	Attorney	Natural Resources Defense Council	\$275	2002	\$275
David	Beckman	Attorney	Natural Resources Defense Council	\$275	2003	\$275
David	Beckman	Attorney	Natural Resources Defense Council	\$275	2004	\$275
Andrew	Wetzler	Attorney	Natural Resources Defense Council	\$220	2002	\$220
Andrew	Wetzler	Attorney	Natural Resources Defense Council	\$220	2003	\$220
Andrew	Wetzler	Attorney	Natural Resources Defense Council	\$220	2004	\$220
Dian	Grueneich	Attorney	Natural Resources Defense Council	\$350	2002	\$350
Dian	Grueneich	Attorney	Natural Resources Defense Council	\$385	2003	\$385
Dian	Grueneich	Attorney	Natural Resources Defense Council	\$415	2004	\$415
Theresa	Cho	Attorney	Natural Resources Defense Council	\$230	2002	\$230
Theresa	Cho	Attorney	Natural Resources Defense Council	\$265	2003	\$265



Theresa	Cho	Attorney	Natural Resources Defense Council	\$285	2004	\$285
Jim	Lazar	Consultant	Natural Resources Defense Council	\$175	2002	\$175
Jim	Lazar	Consultant	Natural Resources Defense Council	\$185	2003	\$185
Jim	Lazar	Consultant	Natural Resources Defense Council	\$200	2004	\$200
Daniel	Lashof	Consultant	Natural Resources Defense Council	\$215	2002	\$215
Daniel	Lashof	Consultant	Natural Resources Defense Council	\$215	2003	\$215
Daniel	Lashof	Consultant	Natural Resources Defense Council	\$215	2004	\$215
Jody	London	Consultant	Natural Resources Defense Council	\$150	2002	\$150
Jody	London	Consultant	Natural Resources Defense Council	\$160	2003	\$160
Jody	London	Consultant	Natural Resources Defense Council	\$190	2004	\$190
Michael	McCormick	Consultant	Natural Resources Defense Council	\$90	2002	\$90
Michael	McCormick	Consultant	Natural Resources Defense Council	\$100	2003	\$100